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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,993	01/12/2001	Conrad V. Anderson	56077USA7A.002	1053

7590 04/02/2003
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EXAMINER

OSELE, MARK A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 04/02/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/759,993

Applicant(s)

ANDERSON ET AL

Examiner

Mark A Osele

Art Unit

1734

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☒ Newly proposed or amended claim(s) 26, 31, 36, 40 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: 6, 7, 19 and 20.Claim(s) rejected: 1, 4, 5, 8-13, 17, 18 and 21-25.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

MARK A. OSELE
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: Applicants' arguments against the Apollonio and Kuroda references are not persuasive. Applicants state that the office action only alleges inherency of transferred forces, not shows it directly. Regarding the Apollonio reference, applicants state that the forces would be transferred onto rigid pole 1 and regarding the Kuroda reference that the forces would possibly be transferred onto the framework. Applicants are attempting to use two different standards in interpreting the invention and the applied references. By merely stating that the forces in the instant invention are transferred back onto the substrate they wish this to be taken as an absolute fact without supporting evidence in an affidavit or declaration. Yet they will not accept the inherency of the properties of physics when assessing geometrically analogous devices. Instead they insist that the forces in Apollonio and Kuroda are transferred to other apparatus members. Again there is no declaration or affidavit analysis of the kinetic forces nor a basis for asserting that forces in the instant invention are directed one direction but in similar structures directed another direction. Instead they attempt to use a legal point to obfuscate the contradictory analysis. They insist that "the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." It is the examiner's conclusion that technical reasoning was provided, namely that the parallel geometric structures of the inventions would all transfer forces in the same direction. It is applicants who are providing fully unsubstantiated technical statements that somehow the forces in Apollonio and Kuroda would be directed in different directions than that of the instant invention. They do not point to any description of the forces in either reference or scientific reasoning behind their statements. Instead they insert a legal argument as misdirection from the contradictions in their own assessments. If there is a scientific reasoning why geometrically parallel devices performing the same function transfer forces in completely different ways, then applicants should describe why the devices would operate differently. Absent such a scientific disclosure in affidavit or declaration form, the only reasonable scientific interpretation is that parallel devices performing the same function inherently use the same forces .